IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 3279 of 2007()

C.M.P. NO. 4943/07 OF THE H.F.C.M. IRINJALAKKUDA

REVN. PETITIONER: COMPLAINANT

ANNAPOORNI,
W/O.NADUVATHRA MADHOM RAMANADHAN,
CHELOOR ROAD, KANDESWARAM, IRINJALAKUDA.
(FOR DHARANI FERTILIZERS, IRINJALAKUDA).

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. M.SANILKUMAR, JYOTHI NIVAS, MADIYIL,
CHITTARIPPARAMBU, PIN 670650.
PROPRIETOR, JYOTHI TRADERS, KOLAYAD P.O.,
KANNUR.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 3279 of 2007

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Dated: 11th day of September 2007

ORDER

Since the complaint was dismissed at the threshold without ordering notice to the 2nd respondent/accused, notice to the 2nd respondent is dispensed with.

2. The revision petitioner namely Annapoorni who claims to be the sole proprietor of Dharani Fertilisers (Irinjalakkuda) filed a private complaint as C.M.P. No. 4943 of 2007 before the J.F.C.M. Irinjalakkuda for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in respect of a cheque issued by the 2nd respondent/accused for a sum of Rs. 32,000/-. The person shown as the complainant in the complaint was Dharani Fertilisers represented by its proprietress, Annapoorni. The learned Magistrate dismissed the complaint as not maintainable for the reason that Dharani Fertilisers is not a legal entity nor a person so as to file or maintain the complaint.

3. Eventhough the learned Magistrate is technically right in observing so, a reading of the body of the complaint a copy of which has been made available to me by the learned counsel for the revision

petitioner, will show that for all intents and purposes the complainant is the proprietor namely Annapoorni and the description of the complainant in the complaint is a misdescription. This is clear from the following averments in paragraph 1 of the complaint

> "വാദി മുകുന്ദപുരം താലൂക്ക് വെള്ളാംങ്കല്ലുർ എന്ന സ്ഥലത്ത് "Dharani Fertilizers .എന്ന പേരിൽ വളം മിക്സിങ്ങും, ഹോൾസെയിലായും റീട്ടെയിലായും ആയും വളം വില്പന നടത്തി വരുന്ന സ്ഥാപനത്തിൻെറ ഉടമസ്ഥ ആണ് "

The said averment clearly shows that the complainant is the sole proprietress of the said business run under the name and style of Dharani Fertilisers. So understood, the view taken by the learned Magistrate cannot be sustained. The impugned order is, accordingly, set aside and the complaint is restored to file and the court below is directed to proceed further in the complaint in accordance with law.

V. RAMKUMAR,
(JUDGE)

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